2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

responded to the order to weed the queen's field, *maharula* went to collect a fowl from each 'rebel'. They collected seven fowls, because most of the delinquents could offer excuses which showed, to the satisfaction of the *maharula*, that they had repented. In 1938 Mahubusana complained that the residents of his district despised him. They had successively ignored his order to make *morula* cider first for himself and then for the queen and also to bring the 'money for the petrol of the queen's car'. *Maharula*, the councillors said, would be sent to exact one goat from every household. Nothing happened. Later Mahubusana brought the five main culprits to the capital and there they were told to pay 5*s*. each to their district head and to leave the district after having gathered in their harvest. 'You have despised the district head and the queen,' it was said. 'Go, then, and live where there is no chief, for here you worry the queen.' There was no trial; and a year after the 1938 harvest the rebels were still living in the district. *Maharula* are also sent to exact the fine due in those 'blood' cases that are reported to the queen. Despite apparent exceptions, *maharula* are not and never were deputed to execute upon a decision of the *khɔrɔ*, for the *khɔrɔ* is concerned with private delicts, wrongs between individuals who, in the last resort, are left to arrange restitution among themselves.

At the village of each district head there is also a *khɔrɔ*, the arrangements of which resemble those at the capital; but, of course, there are many variations. Its competence is in practice determined by the presumptions of the district head; and the law it applies is not necessarily the law of the capital. Some district heads, having sub-districts under them, attach 'mothers' and *maharula* to the *khɔrɔ*, but usually these are only messengers for calling defendants. *Khɔrɔ* trials are usually held in the district of the defendant, and the messenger or 'mother' is entitled to the 'fee of the feet', but not all district heads charge for 'opening' the *khɔrɔ*. The district head may have a special *duna*, often his elder brother, who is entrusted with legal matters and 'presides' in his absence; women who are heads do not appear in the *khɔrɔ*, but confirm decisions. Sometimes the district *khɔrɔ* is better organized and controlled than that at the capital, there may be regular judges and assessors, the word is 'passed' (*hu suma*) from the junior to the senior members, contempt is strictly dealt with, and so on. But this is unusual, the organization being much more haphazard and the procedure much less regularized. Mostly the district head intervenes at the request of one party to see whether he can effect a reconciliation: he sets out with the plaintiff to the village of the defendant rather than summons the defendant to his *khɔrɔ*, or he goes as an intermediary (*mukhumedi*) of the one party to persuade the other to accept the settlement offered. Full-dress *khɔrɔ* trials are often like heated family consultations. *Khɔrɔ* cases in which the fine of restitution is a head of cattle must theoretically be reported to the capital, not for confirmation, but for directions as to the disposal of the fine; but in practice this rule is often not observed. 'Blood' cases not reported to the capital are dealt with by the district head, whose function is something between that of an intercessor and a judge. In theory 'blood' cases are not tried, and in practice district heads do inquire into and often finally settle such cases.

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

695 The procedure to-day involved in witchcraft cases can be set into motion and these cases may be settled by district heads. In short, set rules as to competence do not exist and district heads are left to cope with as much as they can manage.

576 627 561 A brief discussion of some quasi-judicial processes will enable us to appreciate better, as it will introduce us to the procedure and spirit of the *khɔrɔ*. Firstly, there is the method by which especially old women deal with disrespectful or insulting behaviour of younger women. Should one or more young women play a practical joke upon or be disrespectful to an old woman, or playfully 'dance' an infant child, even their own, or prematurely try to make it sit up or walk or scold or beat it, in the presence of the grandmother or of an old woman, their behaviour is regarded as insulting. The conception is that old women in their role as midwives, rather than young mothers, have brought children into the world and the old, not the young, are the guardians of the babes. If one young woman arrogates to herself rights and privileges which belong to the old women, the latter are entitled to take suitable action. The insulted old woman reports to a few of her age-mates and in consultation they decide to punish the age-mates of the young woman resident in the same territorial unit—for example, a district. There is neither 'trial' nor tribunal. The punishment consists of three elements: the age-mates of the young women (say all those who have one baby) must brew beer with which to effect a reconciliation with the older women; in a rite accompanying the beer drink and resembling that used at initiations, the oldest woman canes her immediate junior, who in turn canes the next, and so on, including the culprits; and, finally, the culprits are read a lesson as to the iniquity of being disrespectful to their elders.

One day three young married women, in circumstances that implied disrespect, sent three old women a tiny quantity of snuff. The older women immediately fined the younger and vicariously all their age-mates living in the Christian settlement, for they were all residents there. They were told to grind snuff and restitute their wrong with beer. Five days later the twelve young married women of the settlement came to the house of the oldest woman, bringing large quantities of nuts, light beer, pumpkins, and other food; their husbands, in addition, sent a large tin of snuff and these 'gifts' were divided among the old women. Then followed the rite and the warning. On another occasion all the young mothers of a district were fined because one of them had 'danced' its baby in the presence of its grandmother. Likewise, it is said, though we have not seen a case, that the old women may fine a young father and his age-mates, if he forgets their privileges in regard to babies. But we cannot speak of regimental courts, the age-grades are not determined by the 'schools', the responsibility is territorial, and the punishment is 'beer of reconciliation' (largely replaced by food among Christians).

627 691 The second procedure, that called *hu khumetwa* (to beg pardon, to reconcile), has an enormous province and a profound significance, not only for legal arrangements, but in the whole culture. The procedure uses a *mukhumedi*, the emissary who intervenes on behalf of one of the parties to beg the pardon of the other. Its essence is not humiliation of

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

692 appears, and they rely upon her to suggest a solution and to guarantee its
562 being put into effect. Old women, sitting on the fringes of the court, are sometimes heard to mumble, as if impersonally, about the tortuous ways of the men when such-and-such is the simple solution; a man within earshot overhears the remark and applies it to the case; and more often than not, as you see the men 'jump upon' the happy phrase or formula suggested, you realize that men do not have the monopoly of wisdom. Women are the strongest pillars of the social structure and without their support there can be no guarantee that the adjustments in the superstructure will be lasting or effective; and, in a society that relies on compromise and not on coercion, this role becomes even more important. Women appear as plaintiffs or defendants as frequently as men; we have never heard either the *khɔrɔ* or a party object that an opponent was a woman unassisted by her guardian; but we have heard an old woman, the defendant, refuse to proceed in a case where the plaintiff was a young man of twenty-five years. It was a divorce case, in which the young man presumptuously had handed *munywalo* cattle, not to the mother of the bride, but to the bride's former husband. The mother took back her daughter and the young man sued for the return of his goods. The mother said in the *khɔrɔ*, 'I scorn to discuss the matter with you, a mere child. You know nothing about cases. Bring your father. I do not understand your complaint.' The *khɔrɔ* agreed. Of course, the *khɔrɔ* is the province of the men, and their place and function in it have been institutionalized; by contrast, only a few women have an institutional hold upon the *khɔrɔ*, but they are firmly entrenched in the social structure, which is the *raison d'être* of the *khɔrɔ*.

694 We cannot do more than give a general picture of a few aspects of the practice and procedure of the *khɔrɔ*. There are the usual preliminary processes. A creditor, going alone directly to the debtor, complains (*hu vela*) once, twice, perhaps many times; the complaint is not made through the village head. The debtor may ask his district head or another to intercede as his *mukhumedi*. But if nothing happens, the creditor warns the debtor that he will proceed to *hu ɖalia*, the formal complaint to the district head, not the village head, which begins the case. The dispute may still be settled privately with the district head appearing in the role of an intercessor rather than a judge, probably at the defendant's village. If this fails, the assistance of the 'mother' of the district may be called in, as already described, or there may be a full-dress *khɔrɔ* trial, with its 'opening' fees and 'fees of the feet'. Should the district head be 'overcome', the case may go to the capital. The parties are summoned to appear on a certain Sunday and there are present some fifty men, all of them potential arbitrators. It is difficult to distinguish judges, litigants, and visitors, and, though there is some one presiding, now one, now another of the men, even though they have been found guilty in a previous case the same day, may take the lead and decide the case.

695 The *khɔrɔ* is not unlike a family council: there are no set forms or formulas or procedures, no precise order in which cases are called or matters are discussed. While the parties to one case, unable to reach agreement, retire to the 'dung of the dogs' along the fence of the court-

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

yard, where they may more freely advance personal considerations, the *khɔrɔ* goes on to the next case. After plaintiff and defendant have spoken, the discussion may become general and heated, or it may peter out or degenerate to *ad hoc* arguments in various quarters, and no crisp decision may be given. There are many interruptions. Yet the men say that *khɔrɔ* work is arduous and requires much concentration—clearly their conceptions are very different from ours. They attach great importance to impartial justice, and bribery in our sense is rare. The danger of partiality arises from relationship and friendship; arbitrators do not recuse themselves, but often show their embarrassment by silence or slipping out of the *khɔrɔ*. We have seen cases in which a district head was fined by his own *khɔrɔ* for assaulting one of the residents of his district. Even the queen may be judged (in private) by her retinue, the nobles (*Varamuhaṭulwa gi valada*).

The problem of the *khɔrɔ* lies, not in sifting evidence or dispensing justice according to law, but in adjusting personal differences within the general framework of the social structure. Success is achieved when personality compromises can be harmonized with the implications of the social system. The *khɔrɔ* is not much concerned with strict law or the details of law. They do not rely upon judicial precedents for authoritative legal material. If precedents are quoted, and that is exceedingly rare, their purpose is to suggest arrangements and adjustments that are effective, not to determine a legal rule. The law is not the law of the courts; it is the 'law' of the institutions and is embedded in the institutions; and the harmony of different institutions and their 'laws' results from the total cultural configuration, not the judgements of the *khɔrɔ*. If the arrangements or 'laws' of two institutions conflict in a case, as they sometimes do, the *khɔrɔ* is powerless to resolve the conflict; for law is not of an autonomous order.

We cannot speak of examination, much less of cross-examination, of witnesses. All the parties are present when evidence is given, for 'Only Europeans conceal what one says from another and allow secret manipulations of evidence behind the backs of others'. The foreknowledge of the *khɔrɔ*, the availability of the weapons of confrontation and publicity, reduces direct perjury to a minimum. Litigants know the art of presenting their cases and of skilfully twisting a story, but a man caught out in telling an untruth readily confesses the truth. Falsehood is dealt with by ridicule and laughter; it is not punished as perjury. There are no rules as to what may be admitted as evidence, but the probative value of different kinds of evidence is well understood. The evidence need not bear upon the issue presented to the court, for that issue may merely reflect a more fundamental conflict, and it is with this conflict and its resolution that the *khɔrɔ* is concerned. Hearsay and irrelevancies may furnish important clues as to the origin or nature of the dispute. Rigid proof is necessary when elementary facts are in issue, as when the sole question is how many cattle have to be returned upon divorce, and then reliance is placed upon the evidence of the two marriage intermediaries. In theft and adultery cases, despite presumptions that supplement the evidence of the senses, the *khɔrɔ* is peculiarly helpless and extra-*khɔrɔ* procedures must be invoked.

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

695 Besides the *khɔrɔ* fees already mentioned, there is a 'closing' fee, required only where *munywalo* is returned. Theoretically, one of the cattle is slaughtered and eaten by the *khɔrɔ*, but in practice this is rarely done. Much more usually does one see, when plaintiff is paid some goats or some cattle and goats as the result of a judgement, that the *khɔrɔ* orders one of the goats to be set aside as the 'goat of the shaking of the beards', which is killed for those attending the session, in recognition of all the talking they have done. The queen receives only the £1 exacted as 'opening' fee—required always in *munywalo* suits, rarely in theft, and never in other cases—and the head of cattle paid in 'blood cases' that come before the *khɔrɔ* of the capital. What she receives in this way can never enrich her, though it helps her to provide the *munywalo* of her many wives.

696 Fees and fines or restitution raise questions of execution. The *khɔrɔ* never levied execution in the past and it cannot do so to-day, but self-help is absolutely forbidden. The *khɔrɔ* reluctantly and rarely calls in the aid of the Native Commissioner, and for a litigant to place his case in the hands of a solicitor is an abomination which, whatever his rights, will turn the *khɔrɔ* against him. Execution is frowned upon almost as much as intervention by the European authorities; it is so alien that few things in the society arouse such indignation as seizure by the European sheriff. People hate to be coerced, not only in *khɔrɔ* proceedings, but in every sphere of activities, including their labour for the queen; just as differences must be settled by consent, so also the queen must solicit labour with entertainments. There are exceptions, some apparent, some real: a disloyal district head may be deposed; a subject who disobeys and does not pay the fine imposed may be expelled; a witch's cattle used to be confiscated. But these are not *khɔrɔ* cases and, except in the case of the witch, there is no execution upon property or person.

The enforcement of *khɔrɔ* decisions is left entirely to the parties. But they must agree; they cannot resort to force. This does not mean that the values of the society have been irresistibly internalized or that men are supersensitive to conscience and shame. It is the continuous pressure of institutionalized obligations, the impossibility of doing without the tangible day-by-day mutualities, and the disorganization caused by failure of the long-run reciprocities, not a sense of guilt or shame, which slowly but surely force a man to carry out the compromise reached in the *khɔrɔ*. A judgement creditor may receive no satisfaction for years; he may complain again and again to the *khɔrɔ* that no restitution has been made; yet if the debtor, appearing in the court, says that he is still 'looking for' the payment, it will usually be sufficient. 'Looking for' implies willingness to pay and it rehabilitates the wrongdoer; the *khɔrɔ* may even reprimand an impatient judgement creditor, at least if he has no grounds for casting aspersions upon the honesty or sincerity of the debtor. 'The law', in their phraseology, 'does not eat the man-who-says-I-shall-pay'. Culture contact has struck a severe blow at settlement by consent; the *khɔrɔ*, in an attempt to regain prestige, clamours for the power to punish; and the parties, reluctant to invoke European aid, bolster up the crumbling reciprocities with supernatural sanctions. Most men still have great

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

morning assaulted him, but was worsted; the offender then reported his wound at the capital. A *leharula* was sent to collect the blood fine from the district head, but, not finding him, left a message summoning him to the *khɔrɔ*. There the case was discussed with only initiates of the *gomana* present. The men could not decide upon their course of action. They said, 'Let no one be angry. The district head did right, but we cannot carry out the law of the "school" (the man who reveals the *digɔma* secrets must die). We cannot even impose a fine; no one knows what the fine should be. Let the matter rest.'

Khashani, working on a European farm, called his wife, whose baby was ill, to come to him. The baby died and Khashani, seeing 'medicine' on the fireplace, suspected and severely beat his sister's daughter as well as his sister. The case came to the *khɔrɔ* of the queen, which pointed out that if, as Khashani thought, his sister was a witch, he also probably was one. This did not satisfy Khashani, but his sister demanded back her cattle, and the *khɔrɔ*, attempting to isolate the struggle, said, 'We are discussing the "blood". You, Khashani, must pay your sister one head of cattle.' Khashani replied, 'That I agree to do. I shall even drive away my wife, so that I can return my sister's cattle.' The *khɔrɔ* was not much perturbed, since it thought that Khashani's threat was either bluff or the raving of a madman.

In the last case it was the victim, not the queen, who was awarded the head of cattle. The argument sometimes used by Lovedu men against such an award is better known in other tribes: it is that, if the victim is benefited, all he need do to become rich is to provoke others to fight him. And the theory held by those advancing this argument is that to spill blood is 'to break the queen's calabash', and therefore 'blood' cases must be submitted to the *khɔrɔ*. This is the view gaining ground, so that *maharula*, going to collect the blood fine, become messengers summoning the parties to the queen's *khɔrɔ*, without, however, ignoring the position of the district heads. The whole procedure is in a state of flux, but we can see in outline how the blood feud has gradually receded as the kin groups become submerged by the district organization and how, as a consequence, the procedure of reconciliation gained so firm a hold that it maintains its stand against the forces making for centralization.

Not long ago the procedure appropriate to cases of witchcraft and sorcery was the ordeal (*mureu*); and though the *mureu* has given way in Vulovedu to smelling out by the diviner (*mugɔme*), it can still be seen further east among the Phalaborwa. The test takes various forms; drinking poison, usually an extract of *zavazava* (*Datura stramonium*), licking a medicated stick or a heated hoe, removing a stone from boiling water, floating the kernels of *mutuzi* (*Oncoba spinosa*) in water and observing whether they separate or come together, sometimes accompanied by an oath or followed by the washing of hands or the squirting of water (*ku phasa*). All these are well-known in the lowveld, though the Lovedu used only or chiefly the first; but on the highveld, where witchcraft and sorcery are treated as private matters, there is no legal but only a magical method of dealing with them: the evil is sent back by a doctor privately employed by the victim. The Lovedu no longer rely upon the *mureu*,

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

695 683 754 because it involves too great publicity and danger of European intervention, though they say, perhaps by way of rationalization, that the doctor of the ordeal could manipulate the test. As this procedure is merely of theoretical interest, we need refer only to its salient features.

The victim or his relative privately consulted a bone-throwing doctor, whose verdict he had confirmed by perhaps two or more other doctors before he or an intermediary on his behalf made a public accusation. The ordeal or test took place at the capital and was public. Lineal relatives of accuser and accused or, according to some, two strong men chosen by them, were given an intoxicating drink by the official 'doctor of the ordeal', the spectators watching to ensure that equal quantities were administered. Those who had drunk were put in the sun and he who began moving about or became dizzy, drunken, or incoherent was in the wrong. The witch was usually executed at once, at the orders of the queen, being strangled at the river; but if she was a woman, one of the executioners first had sexual intercourse with her; and the body, tied to a weight, was sunk into the water to be eaten by animals. But the witch was sometimes delivered to the victim to undo his evil work (*hu mu ɓulla*), and if the illness left the victim the witch was released. Sometimes, also, suspected witches were beaten, tied up (nowadays, as we have seen, handcuffed and submitted to ridicule and abuse), and left without food or tortured with velvet stinging-beans until they confessed; this was sometimes done privately, and it was possible also to kill them without the public ordeal, the killing being reported to the queen; but usually they were merely banished.

683 754 The property of a witch who was killed was not all confiscated, but *baza*, consisting chiefly of his cattle, was taken by the queen for division between herself and her nobles. No one else could appropriate *baza*; even the village head, if he did so, was regarded as a thief. The witch's gardens reverted to the district head, the crops were taken, not by the queen, because she could not eat the 'dirt of the witch', but by the messengers of the queen, for they were so busy in her service that they could hardly cultivate their fields. Residents in the district surreptitiously during the night took the witch's crops, but it was regarded as disgraceful to do so openly during the day. The wife of a witch was taken by a classificatory brother, and his children were adopted by the queen, who received *mumɣwalo* when she married the girls to her nobles (in more recent times, to commoners, because the girls often deserted). In the days of the kings, all the relatives, or, as some say, only those on the mother's side—the mother's uterine brothers and sisters especially—were killed. The queens had only a uterine brother or sister killed if they failed to leave the country. The witch, unlike a murderer, could not find sanctuary in the forest of Ɗaja; and only a witch's, not a murderer's, property was *baza*—confiscable property.

787 695 [177] Since the beginning of this century submission of issues to ordeal has been replaced by their submission to the smelling-out diviner (*mugɔme*). The institution of the *mugɔme* has been borrowed from the Shangana-Tonga and its whole complicated legal procedure is still in a state of flux, adjustments being constantly made especially to avoid European intervention.

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

intervention. The procedure involves, first, private consultations of a doctor, followed by an accusation directly or through an intermediary, a wager by the parties, publicly made often in the *khɔrɔ*, then a journey in the company of the 'ears' (official witness) of the chief to a distant smeller-out, the actual smelling out, at which the victor may be given a buck's horn to blow on his way home, and, finally the report to chief or district head and the adjudication of the *khɔrɔ*. We are here concerned only with the legal aspects, but we must at the outset remark that the procedure, primarily used in witchcraft cases, is relied upon whenever there are evidential difficulties and, paradoxically, it has rendered theft, adultery, and other wrongs, not less, but more amenable to some form of *khɔrɔ* control. Publicity and centralized control in the phenomenal, periodical *mureu* proceedings at the capital in the old days guaranteed their effectiveness, but men could privately execute self-confessed witches. To-day, amid conflicting tendencies, *mugɔme* proceedings are less public and hardly the prerogative of the queen. Witchcraft is not conceived necessarily to strike at the whole society; it is often dealt with privately; and even, after resort to the *mugɔme*, agreement by the parties in the district courts may end the matter.

The *mugɔme* procedure lends itself to fixing responsibility when a whole district feels threatened, just as in the old days the *mureu* was used whenever the whole country wished to ward off danger. When, at a certain district gathering, it was decided to send delegates to a *mugɔme* concerning the occurrence of many deaths in the district, one young woman objected, saying, 'It is nonsense; we know the sickness is not "sent". If you go to the *mugɔme* and he "beats" (points out) members of your family, the whole district will be quarrelling.' The *mugɔme* pointed out the young woman who had objected, but she demanded that, if any one accused her, he should go with her to another *mugɔme*, and when she appealed to the capital for appointment there of the official witness, no one came forward as a direct accuser and for that reason the case broke down. Subsequent cases in which the young woman was involved reflected how the proceedings had not relieved, but aggravated, the sense of insecurity in the district. Shall we conclude that the remedy is worse than the disease? We cannot do so, because where there are no *mugɔme* proceedings, as on the highveld, the incidence of witchcraft and sorcery is not less. Moreover, *mugɔme* proceedings are believed to, and do often, remove grave threats to the community. In 1938 the tributary *morula* cider was being made at the village of the head of a sub-district. On the second day the cider frothed suspiciously and after a meeting of the sub-district, money was collected and representatives of every family went to the *mugɔme*, who found that the headman had poisoned the cider, and in truth everything pointed to the use of cattle-dip or locust poison. The matter was reported to the capital, where, without formal trial, the headman was ordered to leave the district. In our opinion a dangerous criminal had been successfully dealt with, but, what is more important, the feeling of security of the people had been restored.

We may now shortly examine some aspects of *khɔrɔ* control over *mugɔme* proceedings. The challenge, supported by a wager to submit the truth

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

of an accusation to the *mugɔme*, is made before, during, or even after *khɔrɔ* proceedings, but if the dispute is dealt with by the *khɔrɔ*, the findings of the *mugɔme* can be accorded recognition only if the official witness, the 'ears', has been previously appointed by the *khɔrɔ*; the results of a private consultation cannot be given in evidence before the *khɔrɔ*. The 'ears' is sometimes appointed by the district head of the person challenged, but the theory is sometimes advanced that only the capital has jurisdiction to do so. His integrity is an important factor, for he must relate to the *khɔrɔ* the details of the wager, the competence of the *mugɔme*, the method by which the decision was reached and its nature, and whether or not the parties consented to the decision. The 'ears' must be a disinterested person, to avoid accusations of corruption and favouritism, as well as to guarantee that there is no manipulation of the fees entrusted to him by the parties for defraying the expenses of the expedition. Integrity and impartiality are best guaranteed where the capital appoints the 'ears'.

Often enough the findings of the *mugɔme* are accorded no recognition at the capital when the parties have gone forth from a district *khɔrɔ*. This does not mean that the parties cannot agree to the verdict of the *mugɔme* at the district *khɔrɔ* where the 'ears' has been appointed; nor is there any great desire to centralize control, which is sometimes encouraged, sometimes feared, and sometimes more or less an inevitable consequence of the need to obtain passes at the capital for the journey to a distant *mugɔme*. The practice of appointing 'ears' in the districts is not unconnected with the danger of implicating the capital with the European authorities. It sometimes happens, when the parties come for a pass and a report is made at the capital, that the queen's councillors disclaim any interest or concern in the matter. Wherever the 'ears' may be appointed, he is given the *phitho* (thing to be hidden), any small article such as a snuff box or coin which is concealed and must be named and found by the *mugɔme* as a test of his competence before the divination begins.

Khɔrɔ control is evident also in the manner in which it may refuse its assistance or dissuade the parties from going to the *mugɔme*, even though it can come to no decision in the dispute. The attitude of the *khɔrɔ* may be manifested in many ways, and its aim in refusing assistance is much the same as that of the queen when she intervenes behind the scenes in the interests of reconciliation by forbidding the publicity of *mugɔme* proceedings. We shall refer to a few only of the cases we have witnessed. A recruiter used to pay all labourers recruited £2, which had to be paid into the tribal fund before the tribal 'secretary' issued a pass to the labourer. For reasons we need not detail, the 'secretary' gave the labourer no receipt and the recruiter sued the 'secretary'. This is precisely the kind of case that the *khɔrɔ* finds very difficult to handle and, as the 'secretary' was a Christian, not amenable to *mugɔme* proceedings, the recruiter challenged the labourer to go to a *mugɔme*. But the *khɔrɔ* disallowed the challenge on the ground that the transaction had occurred in daylight, and instead ordered recruiter and 'secretary' jointly to pay the £2.

The *khɔrɔ*, by refusing to appoint 'ears', can prevent submission of a

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

695
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dispute to the *mugɔme* or it may send back the parties to their district head for him to appoint the 'ears', the purpose often being to tire them out or to exhaust their resources, so that they will more easily come to an agreement. But the opposite often happens: the *khɔrɔ*, tired of the obstinacy of the parties, may tell them to submit their differences to a *mugɔme*. Mudali complained that Uumme, mother of Muloi, was spreading rumours that he had caused Muloi's illness. Muloi was known to be a witch who had killed two of her brothers-in-law, sons of Makhulu, and Makhulu had with the aid of a great specialist 'sent back' a terrible illness which was rotting great holes in Muloi's body. But Uumme could not proceed against this legitimate revenge and, as it was rumoured that Mudali was a lover of Muloi, Uumme attempted to inculpate Mudali. These facts were generally known, but were not disclosed in the *khɔrɔ*. Mudali said that his accusers knew that he had no medicines and to clear his name he challenged Uumme to go to a *mugɔme* with him. Uumme retorted that she resented the insult from an adulterer, and the *khɔrɔ*, fearing that the conflict would spread, advised the disputants to go back to their district head and there arrange to go to the *mugɔme*. 'Ears' was appointed and early one morning we all stood ready at Mudali's village, with food for a long journey, perhaps 100 miles; messages and counter-messages passed to and fro between the villages of Mudali and Uumme, but nothing happened; and the following Sunday the case was again in the *khɔrɔ* of the capital. Uumme's people said that, as they had made no direct accusation, they refused to go to the *mugɔme*, but the *khɔrɔ* retorted, 'If Muloi dies, you must not blame Mudali. Now pay him the "cutter of the tongue" (which silences the mouth), for if Muloi dies the Europeans will come.' Uumme refused, and Mudali, satisfied that his name had been cleared, allowed the matter to be dropped.

The *khɔrɔ* or the queen may dissuade the parties from resorting to the *mugɔme*. Siga accused Maidi—they were co-wives—of having removed a tooth from Siga's child, who died, and of inserting it into the mouth of Maidi's baby. Maidi's relatives advised her to challenge Siga, but the queen, calling Maidi to her, said, 'I cannot support you. The witchcraft may be that even of your mother. Let the matter be.' And her advice was accepted. Similarly the *khɔrɔ* discourages unfounded accusations among members of the family, curbs the inclination to squabble, and in various ways attempts to prevent the challenge which so readily rises to the lips of angry relatives. A young married woman, accusing her mother-in-law of harassing her with familiars, fled to her parents, who, when the mother-in-law came to call her back, imputed to her the death of the children of a relative of theirs. The mother-in-law brought an action, but, as is usual when there is danger of *munywalo* and family entanglements, the *khɔrɔ* quashed the case as nonsense (*switshele*) and sent the parties home to compose their differences by *ku khumelwa*. Tsezi, instigated by his mother-in-law, who had a family quarrel with Dali, accused the latter of sending the lightning which had struck down a tree near his village, but the district head stopped the challenge from being submitted to a *mugɔme* by dismissing the case as unfounded gossip. Sagani, whose

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

695 787 adultery with his father's young wife was exposed by her, accused her of causing his son's death; but the *khɔrɔ* told him to beg pardon with a goat, which would also serve as the 'cutter of the tongue'. When uterine sisters challenged one another before the *khɔrɔ* the men ridiculed them, saying, 'Who has ever heard of uterine sisters bewitching one another'—not a very conclusive argument, but sufficient for the purpose in hand. When Mabula, the cattle-linked sister, was called to squirt water (*ku phasa*) for the sick child of her brother, she construed the summons as an accusation of witchcraft, for to call another (not a close relative) to perform this rite is one method of imputing witchcraft; but Mabula's husband intervened in the *khɔrɔ*, explained how his wife and her brother by their quarrels were breaking up his home, and suggested that they beg pardon of one another. The *khɔrɔ* agreed and averted the challenge.

Even if the parties had been to the *mugɔme* with the official witness the *khɔrɔ* is not absolutely bound. In the old days, it is said, the *khɔrɔ* allowed argument as if the divination of the *mugɔme* was not infallible and if the parties were not satisfied the *khɔrɔ* could on the initiative of one of them send them to a second *mugɔme*. To-day, despite the theory that the *mugɔme* is infallible, the old practice persists. We have seen many arguments on the merits and many reversals of the findings of the *mugɔme*. These findings may be attacked on the grounds of irregularities in the procedure, such as separation of the parties when they were on the journey, corruption of the 'ears', incompetence of the *mugɔme* who failed to find the *phitho* or to indicate correctly the group or totem names of all the parties, dissatisfaction of the one party with the findings at the séance, confusion of the bones by medicines 'thrown' at home, and many others. When there is a conflict between the evidence or a presumption (such as, in adultery cases, the presumption that a woman's evidence is almost as reliable as the bones) and the findings of the *mugɔme*, there is no telling which way the ultimate verdict will go. The cases in which these conflicts have occurred are too complicated for adequate handling here, largely because the primary object of the *khɔrɔ* is appeasement of the parties and reconciliation of what appear to be incongruous institutions.

There are other aspects of the procedure that have great legal interest—for example, the principles governing vicarious representation of challenger and challenged before the *mugɔme* and the right of the person vicariously smelt out to appeal for a second expedition of which he is a party, the rule as to the conduct of the parties on the journey, the requirement of the *khɔrɔ* that it can take cognizance, not of gossip or general rumour, but only a specific accusation by a specific challenger, and many others. We shall touch upon two further points only.

695 791 Firstly the *mugɔme* is always a Shangana-Tonga and lives far away. Litigants from other tribes come to Uulovedu, but the Lovedu generally say that they are going to Phafuli, on the borders of Portuguese East Africa. The theory is that the more distant the *mugɔme* the more reliable his verdict will be. But distance also safeguards the diviner from the vengeance that neighbours might take, shifts the incidence of distasteful responsibilities from the *khɔrɔ* and eliminates strife between the two

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

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XIII. AT THE CAPITAL

(a) RE-BUILDING THE COURTYARD OF THE CAPITAL

(b) THE COURTYARD (KHORO), WITH A CASE IN PROGRESS

[facing p 208]

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

powerful jurisdictions, the *khɔrɔ* and the *mugɔme*. The *mugɔme*, great though his powers be, holds a precarious position in the modern world. His fees are not fixed, but the usual amount is £1 2*s*. 6*d*., though it may be 5*s*. or more for each person of the party. Much of his technique is directed towards preventing the consultants from giving him away to the European authorities. 'If you say I am a liar,' declared one *mugɔme* to the parties, 'take back your money and go elsewhere. I even challenge you to take me to the Europeans; they will agree with me, as I have a licence to divine.' In another case a *mugɔme* refused to find any one guilty. 'You force me,' he said, 'to smell out the witch, but you have left him at home. The other diviners who smelt out this man [the challenged person] are all wrong. And you [the challenger], if you wish to settle the dispute, must place a head of cattle as a sacred beast to wake up your grandfather.' But this finding did not persuade the parties to withdraw their case from the *khɔrɔ*, and the *khɔrɔ*, ignoring the finding, settled the matter in its own way.

Secondly, the wager is not made by way of an oath, but it is sometimes reduced to writing: 'They bet four head of cattle' (*va bɛjije khomu je nne*); that is all. The tiny slip of paper is kept by the 'ears'. The use of the term *ku bɛja* shows, as the people say, that the wager is a new conception. But we cannot be certain that the wager has been borrowed from Europeans. It fits the whole complex of judicial process: its essence is consent of the parties to be bound by their wager and by the findings of the *mugɔme*. If one of the parties disagrees with these findings, he is entitled to demand back the money paid to the *mugɔme* and ask the party to go further to another *mugɔme*. The *khɔrɔ* may, however, vary the bet. The victor comes to the *khɔrɔ* and blows his horn; and the women ululate and dance (*ku pɛbɛla*, which by extension also means to be acquitted or declared innocent by ordeal or *mugɔme*). Meanwhile the vanquished party goes home and, if he is contrite, he says that he could not help doing wrong. Next day he might appear in the *khɔrɔ*, ask for time to pay or *khumɛlwa* or send an old man to plead for a reduction of the bet. The victor pretends to refuse, but in the end, if the *khɔrɔ* presses him, he will agree. Or the *khɔrɔ* may, on its own initiative, reduce the bet. Everything depends on the circumstances. Where the mother of a man was alleged to have killed the wife of his elder brother (the challenger), the *mugɔme's* verdict was against the mother, but as he had said that she was not a born witch, but had only purchased the medicine from another, the *khɔrɔ* awarded the challenger two head of cattle instead of the six actually wagered. The bet is often not paid in full, while sometimes nothing at all is exacted as the 'cutter of the tongue' of the slanderer. But we have seen cases in which the *khɔrɔ* has, at the suggestion of one party, raised a wager from four to six head of cattle.

This is not the place to discuss the interrelations of the tribal and the European systems. For one thing, the subject requires a volume to itself. But it is necessary to insist that in criminal matters the system of Native courts is by European law essentially an integral part of the European structure. In 1934 Mujaji was given criminal jurisdiction in respect of offences punishable under Native law, but fines are limited to two head

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

integration that has taken place has been a response of the culture itself to the challenges of the new order. Therein lies the greatest difference from the manner in which Christianity has influenced the culture. Since 1938 the policy has changed somewhat, and there are more active though still not conscious interferences with custom; but among the Lovedu the effect as yet has been negligible. 177

The labour migration to towns and farms, necessitated by taxation, is reluctantly undertaken. The Lovedu are not easy prey to recruiters, who have to give assurances regarding, not only labour and other conditions, but also immunity from arrest for arrears of tax. The ideal is to return home, for 'The only place one never returns to is the womb'. The migration has not had the great effect that is reported in other parts of Africa: very little that is brought back is incorporated into the culture, even the accent men acquire in towns being rapidly discarded: marriage ceremonial does not require the presence of the man, his bridal visits being often undertaken by others; the pivotal position of women in the social structure minimizes disturbances; and, since during the whole suckling period a husband should partially avoid his wife, his absence for six months or so in town is not a serious problem as far as sexual adjustments are concerned. The absence of the men creates difficulties in holding the initiations and in economic dispositions. But the salient fact is that the energies liberated by the use of the plough exceed the drain caused by the labour migration. Old men, who no longer pay taxes, conduct the political and legal affairs of the tribe, and women, who do not migrate, control religion and ritual.

In legal arrangements there have been changes. But the deprivation of the power to enforce decisions means little to the old culture, which never relied upon force, though it may mean something when the sanction of reciprocity has become undermined. The force of the law is being destroyed, not by the limited jurisdiction allowed, but by the interference of solicitors and the multiplication, so it is believed, of criminals acquitted or protected by the European. Witches, they say, escape punishment by Europeans, because Europeans neither have witchcraft nor understand its workings. We have elsewhere noted some readjustments in legal procedure. Here we need add only a few further points The *khɔrɔ* must be careful lest dissatisfied litigants report procedures or decisions that are illegal by European standards; but, on the other hand, it sometimes threatens recalcitrant debtors with the dire consequences of being sent to the European, and such is the disinclination to be judged by the European that the threat is generally effective. The *khɔrɔ*, for instance, takes care not to order an expulsion (which is illegal) before the crops are reaped, as the victim is then more liable to appeal, while many cases may be quoted in which the threat to send a litigant to the Native Commissioner has led to a solution by agreement. The weakening of the sanctions of reciprocity has led to increasing resort, not to the European courts, but to 'sending back' the evil. 177 692

The *khɔrɔ* has more and more to deal with written evidence, such as cattle lists, letters between the parties and from farmers, and pieces of paper on which had been noted the marriage cattle that have passed. 177 695

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

177 695 The handling of this evidence is woefully unskilful, but important distinctions must be made. Where the writing takes the place of the notches that used to be cut on sticks to indicate the cattle that had passed, it tends to be accepted if there is other supporting evidence; statements in a letter of the amount of money sent with the letter are generally given credence; but sentiments expressed in letters and written accounts of the circumstances of a case are usually completely ignored or dismissed as unimportant. In one case where a husband wrote that he had definitely deserted his wife, the court ignored the letter on the ground that, unless the husband gave his evidence in person, he might well reverse his attitude and appeal to the Native Commissioner. The subject of the development in the handling of written evidence is a large one; but to what we have said we would merely add that the recording of evidence in writing has been attempted, since 1932, in only fifteen cases all told. The attempt has miserably failed. The usual record reads approximately as follows: 'Andrew Malopo *v.* £19. 5 Jim Malate 2/8/32', and to that cryptic statement nothing is added by way of such embellishment as the nature of the case, whether the date refers to the day of trial or retrial or payment, whether in fact there has been payment, and so on. Native Commissioners have sometimes tendered advice about how cases should be decided and recorded, but it is beyond their province, and the results have been precisely nil.

177 642 Political institutions have suffered no fundamental change. External relations are maintained through the wives the queen still receives from, and the rain she still gives to, foreign chiefs; the suppression of military exploits and cattle raids has not affected the Lovedu. Relations with European authorities have modified initiative and control over large spheres of policy, for the tribal authorities receive instructions rather than discuss suggestions, though consultation is nowadays a recognized preliminary to the introduction of an innovation. The tribal gathering (*khivij*) never was important in Ulovedu; now it discusses perhaps more tribal matters than in the past, as well as European proposals and demands, but it has little power. The councillors, presenting European matters, sometimes give a distorted version, finding it difficult to justify either the measure proposed or their inability to bring about modifications or to circumvent it; and very often they do not mention important points at all. The widespread tendency to justify a desired action by saddling the European with responsibility for it reappears again and again. The people may be told by the councillors (who have a car) to mend the road, because, they say, an official who broke the spring of his car upon it has complained to the Native Commissioner; the administrative admonition to maintain better control over young boys going to work without their parents' consent was presented to the tribal meeting as a warning that boys not carrying tax receipts would be arrested if found at beer parties. (By traditional standards, now maintained with difficulty, beer parties are only for adults.) The justification or circumvention is upon the pattern that is known, and that pattern, despite the intervention of the European, remains intact.

177 231 656 Measures taken to protect national (South African) interests, such as

3: Krige E-5 (1928-1938)1938 FX14 Lovedu FX14

634 624 characteristic of Lowveld political organization. Districts are still of great importance, and the district head is a busy and important man, both socially and politically. Contact with the European has resulted in two diverse tendencies observable in our area: among small tribes, 634 624 such as Phalaborwa and Sekhopo's Lobedu, there has been increased centralization, the chief taking over functions, such as allocation of 178 land, which used to be the province of headmen; elsewhere, especially in the large kingdom of Modjadji, district headmen are in many respects becoming more independent, exacting from underlings labour to which they are not entitled and even controlling other districts to which they have no right.

624 562 Women may here, as among Venda, be heads of districts,[1] and, though the proportion of women to men is never high, they are often the most important district heads in the tribe. Women become headmen in a variety of ways: among Lobedu a woman of the royal family may be appointed head of an area (generally, nowadays, over newly-bought tribal land) and though in practice her husband may do most of the work, she it is who is recognized and approached in the last resort. A daughter of the chief house succeeds her father even if there are sons of other houses; a woman may succeed her husband when the children are too young, and though, strictly speaking, she is only a regent in this case, she often continues to rule until her death and long after her son has attained his majority. Or a *rakhadi* may be asked to act as regent for her nephew, in which case she very often secures the succession for her own son, ousting the rightful heir.

● 695 Law and Justice. The Lowveld was the land of the ordeal, the only method by which witchcraft could be discovered or difficult cases of theft and adultery, where evidence was inconclusive, be decided. Boiling medicated water which scalded only the hands of the guilty might be used or a concoction be drunk which intoxicated the culprit, leaving the innocent unaffected. Except for occasional use among the Phalaborwa, however, the ordeal has been completely ousted by the Shangana–Tonga smeller-out and a modern method of dealing with witchcraft has developed over the whole of the Lowveld, which has spread not only into Vendaland but also into portions of the

[1] Except among Phalaborwa, Tsubye, and the people of Tswale and Sekhopo.

3: Krige E-5 (1928-1938)1938 FX14 Lovedu FX14

Highveld. When, after many private consultations with diviners, a man decides to make an accusation of witchcraft, he and the accused will *betcha* or lay a wager of money or cattle on the matter, after which, accompanied by a witness, the 'ears of the chief', supplied by the Head Kraal, they set out to consult a far-away smeller-out, nearly always a Shangana–Tonga who lives too far to know anything of the people concerned. Unless the smeller-out is able to give the totems of all members of the party and successfully find an object that has been hidden beforehand, they will pass on to another until some one suitable is found. The verdict of the smeller-out is taken to court where it is always accepted and the guilty party told to pay his wager, the modern counterpart of the death penalty of old. A distinction between murder and accidental homicide is everywhere found in the Lowveld, punishment for the latter being the handing over of a girl to the injured family. She never returns home, nor does any bride-price pass.

Bantu etiquette, which makes it impossible for a case to be reported to the chief except through a third party, generally among other Sotho tribes one or two specially appointed men, has in the Lowveld given rise to a rather more complicated system whereby each district has its 'mother' at the Head Kraal, through whom reports are made and actions brought. Where a person in one district has a case at the Head Kraal against some one in another district, the 'mother' of the complainant's district will approach the 'mother' of defendant's district to call his 'children' to the court, and various payments are connected with the system. Most of the important men living at or near the Head Kraal are such 'mothers', many having more than one district in their charge.

FAMILY AND CLAN. There is among Lowveld Sotho no term distinguishing the father's from the mother's side of the family, the word *moloko* being used to denote all relatives whether on the father's side or the mother's; and in practice, whether at weddings or at working parties, both sets of relatives play an equally important, if sometimes different, part. A man inherits his totem and family name from his father, but in his education and social life his mother's people have great influence. Most children spend some years of their life with the

3: Krige E-5 (1928-1938)1938 FX14 Lovedu FX14

881 established. Sometimes a school in which boys receive cuts on either
794 side of the face, it is associated also with rain ritual and with the *dajane* or ancestral spirits who come to earth and speak in a whistling, wailing manner.

794 An interesting feature of the Northern Transvaal is the tendency for private people, strangers from tribes who have certain schools, to set up schools with the permission of the chiefs in areas where they are not known. People are always willing to join them, and they are a source of great profit to the holder. Thus the Dikxale of the High-veld have no *komana*; but a Narene man who has come to live in the area has brought *komana* drums and holds schools to which many Dikxale go.

836 Sex Morality and Marriage. Sex morality among Lowveld
837 tribes conforms to the general pattern found over South Africa in having pre-marital sex intercourse as an institution fully approved of by society as long as no children are born. Furthermore, adultery, which is an everyday occurrence, is not looked upon as serious in any way unless the parties are indiscreet and are discovered. Widows, especially, are recognized as easy prey to male advances even though
[684] they have been inherited by the husband's brother. The fine attached to adultery is usually one head of cattle; but the general laxness is better illustrated in the attitude found among the Narene, where there is no fine attached to adultery, though a man caught in the act will
• [695] send something to the husband to beg pardon. In court, the bare word of a woman accusing a man of adultery is always accepted.
[684] Seduction of a young girl is a much more serious offence than adultery, with the correspondingly higher fine attached to it of two head of cattle and a goat, and realization that marriage is much more than a sexual relationship between the parties concerned is shown in the fact that far from trying to promote marriage between the parties concerned, the parents of the girl will refuse any alliance with a boy whose people they do not consider suitable.

582 Like all Sotho peoples, the Lowveld tribes have the institution of
[171] preferred marriage with certain relatives, in contrast to the Zulu-Xhosa with whom marriage with any related person is taboo. Fully 40 per cent. of all marriages are, in our Lowveld area, with the